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of Austin

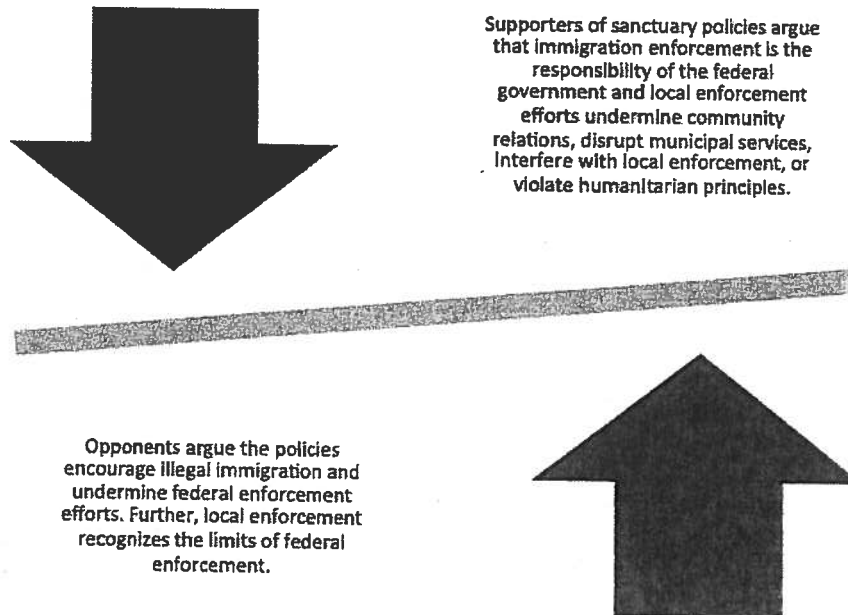
HB 12 Backgrounder

HB12 has far reaching implications for the immigrant community in Austin, and could come up for a vote on the House floor as early as this week (first week of April 2011).

Sanctuary City Policy

HB 12 is a proposal for addressing the perceived need for a policy to prohibit sanctuary cities in Texas. The term "sanctuary city" has no legal meaning as it is not defined by federal law or statute. It refers to jurisdictions that have state laws, local ordinances, or departmental policies limiting the role of local law enforcement agencies and officers in the enforcement of immigration laws.¹

Gov. Perry has named the abolishment of sanctuary city policies as an emergency legislative issue in the 2011 session. A bill related to an 'emergency' issue can be voted on by the Senate at any time during the session, streamlining the legislative process.



House Bill 12 as filed by the 82nd Texas Legislature

House Bill (HB 12) prohibits local governmental entities from adopting a rule, order, ordinance, or policy under which the entity will not fully enforce state and federal laws relating to immigration. Further, an entity cannot restrict an employee from sending or requesting immigration status from USCIS or ICE, maintaining this information or exchanging information

¹ Congressional Research Service. "Sanctuary Cities: Legal Issues" Yule Kim and Michael John Garcia/RS22773. January 9, 2008.



**Immigrant
Services Network
of Austin**

with other governmental entities, cooperating with a federal immigration officer, or permitting a federal immigration officer to conduct enforcement activities at a municipal or county jail. Any entity found in violation is ineligible for state grant funds for one fiscal year.

Local Community and Service Provider Concerns re: Provisions in HB 12

Policy analysts and advocates have identified the following areas of concern relating to increased involvement of local authorities, including employees of school districts, with immigration enforcement.

Financial costs

- Local tax-payers bear the cost of longer detention for individuals whose detention is extended for immigration enforcement. After issuing a detainer, ICE provides only limited reimbursement for the costs related to maintaining custody of detainees.² Dallas County Sheriff Lupe Valdez estimates this translates to an additional 4,000 and 20,000 people in the Dallas County jail at a cost of \$60 a day, totaling approximately \$1.2 million.³
- The fiscal note on HB 12, as developed by the Legislative Budget Board, predicts 'significant' implementation costs for local jurisdictions.⁴ According to the LBB note, Houston Police Department reports projected implementation cost to the city department of approximately \$5 million.
- Patrol resources and overtime associated with stopping, arresting, and booking individuals who are targeted for immigration verification.⁵
- The cost of training local law enforcement about immigration laws.⁶ Dallas County Sheriff Lupe Valdez estimates training costs at \$1,600 per officer.⁷
- Burdens state and local agencies with enforcement of federal civil violations.⁸
- Lack of clear authority and the changing nature of immigration law increases the risk of civil liability for local police and government, as well suits arising from racial profiling.⁹

Public safety costs

² ACLU, "Costs and Consequences: The High Price of Policing Immigrant Communities."

³ Torres, Zahira. February 18, 2011. "Law officers Decry Immigration Bills." *The El Paso Times*

⁴ Texas Legislative Budget Board. March 15, 2011. HB 12 Fiscal Note. 82nd Legislative Regular Session. <http://www.capitol.state.tx.us/todocs/82R/fiscnotes/html/HB00012H.htm>

⁵ ACLU, "Costs and Consequences: The High Price of Policing Immigrant Communities."

⁶ Major Cities Chiefs Statement on Immigration. June 8, 2006.

<http://www.houstontx.gov/police/nr/2006/june/nr060806-1.htm>; Ferrell, Craig. 2004. "Immigration Enforcement: Is it a Local Issue?" *The Police Chief* (71)2.

⁷ Torres, Zahira. February 18, 2011. "Law officers Decry Immigration Bills." *The El Paso Times*

⁸ Ferrell, Craig. 2004. "Immigration Enforcement: Is it a Local Issue?" *The Police Chief* (71)2;

⁹ Involving local police in immigration law enforcement activities is likely to lead to mistakes and costly litigation. In May 2007, under a 287(g) agreement, a developmentally disabled U.S. citizen was mistakenly identified as a Mexican national and transferred to an ICE detention center and was later deported. See National Immigration Law Center: <http://www.immigrationpolicy.org/just-facts/local-enforcement-immigration-laws-through-287g-program>. Additionally, the cooperation of local enforcement has been shown to exacerbate the use of racial profiling. See ACLU of Georgia's report on racial profiling in Gwinnett County.



**Immigrant
Services Network**
of Austin

- Undercuts the relationship and trust between immigrant communities and law enforcement.^{10,11} This situation could impede a range of critical law enforcement activities including trafficking investigations.
- Results in underreporting of crimes by immigrant victims and witnesses because of fear of detention.¹²
- Domestic violence victims choose not to report incidents for fear the police will act as immigration officers.¹³
- Discourages immigrants from reporting an officer's misconduct.¹⁴
- Inhibits local law enforcement from performing their primary task of fighting crime at the local level.¹⁵

Impact on Children and Families

- Undercuts the relationship and trust between immigrant communities and the education system. This situation could lead to a decrease in attendance among children from undocumented or mixed status families.^{16,17}
- Minority students report high levels of harassment from police and school authorities. Legal protections prohibiting the collection and dissemination of student information, including immigration status, are routinely violated. As a result, minority students report fear and distrust of both law enforcement and school officials.¹⁸
- Immigration enforcement conducted by school district employees or at school campuses targets children and their families. This can lead to the separation of families through

¹⁰ Police Foundation. 2009. "The Role of Local Police Striking a Balance Between Immigration Enforcement and Civil Liberties."

¹¹ For a more detailed discussion of the impact of local enforcement programs on the immigrant community, see Randy Capps, et al. 2011, "Delegation and Divergence: A Study of 287(g) State and local Immigration Enforcement." Migration Policy Institute.

¹² ICE programs that encourage cooperation with local law enforcement, such as 287(g), Secure Communities and the Criminal Aliens Program, result in a decrease in crime reporting from immigrant communities. See ACLU, "Costs and Consequences: The High Price of Policing Immigrant Communities." and National Immigration Law Center. 2011. "Victimizing the Victims."

¹³ National Immigration Law Center. 2011. "Victimizing the Victims."; Police Foundation. 2009. "The Role of Local Police Striking a Balance Between Immigration Enforcement and Civil Liberties."

¹⁴ ACLU, "Costs and Consequences: The High Price of Policing Immigrant Communities."

¹⁵ Major Cities Chiefs Statement on Immigration. June 8, 2006.

<http://www.houstontx.gov/police/nr/2006/june/nr060806-1.htm>; Ferrell, Craig. 2004. "Immigration Enforcement: Is it a Local Issue?" *The Police Chief* (71)2.

¹⁶ Riccardi, Nicholas, February 18, 2008. "Deportation of Student Stirs Up City" *The LA Times*. <http://articles.latimes.com/2008/feb/18/nation/na-school18>; The Associated Press. August 3, 2010. "Immigration Law May Have Cut School Attendance." *The AZ Capitol Times*.

<http://azcapitoltimes.com/news/2010/08/03/immigration-law-may-have-cut-school-attendance/>

¹⁷ While reports of decreased attendance due to enforcement operations related to school campuses are anecdotal, at this point, there is sufficient evidence of the negative effect of local immigration enforcement measures on attendance rates. See Police Executive's Research Forum. 2011. "Police and Immigration: How Chiefs are Leading Their Communities through Challenges."

<http://policeforum.org/library/immigration/PERFImmigrationReportMarch2011.pdf>

¹⁸ Urban Justice Center Community Development Project. June 2006. *Education not Deportation*. http://www.urbanjustice.org/pdf/publications/Education_Not_Deportation_Report_06jun06.pdf



**Immigrant
Services Network**
of Austin

either the deportation of an undocumented child away from a documented parent, or vice versa.¹⁹

- In cases involving the child of a detained or deported parent, the child could become a ward of the state. This situation is in neither the child's best interest (developmentally) nor the state's best interest (financially).²⁰

Legal Considerations

The Implementation of HB 12 may challenge several Supreme Court decisions. In the 1975 case, *U.S. v. Brignoni-Ponce*, the Supreme Court ruled that the 4th Amendment prohibits police officers from stopping or detaining person on less than reasonable suspicion when the violation is related to illegal immigration.²¹ In the 1976 case, *DeCannas v. Bica*, the court ruled "the power to regulate immigration is unquestionably a federal power."²² In the 1982 case *Plyler v. Doe*, the court ruled that the State of Texas could not discriminate against public school students based on immigration status without violating the 14th Amendment to the Constitution. Implementation of the provisions in HB 12 to allow peace officers at every jurisdictional level to enforce immigration law may lead to legal actions against the state of Texas.

For more information on this document or policy topic, please contact:
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¹⁹ Sapelo Foundation. 2010. Immigration Enforcement and its Effect on Latino Children in the State of Georgia. <http://www.sapelofoundation.org/immigration2.pdf>

²⁰ Ibid; See also the Urban Institutes reports on the effect of immigration enforcement on children. These reports show that schools have actually played a mitigating role on the impact of raids on children, including coordinating services to prevent children from entering state welfare systems. ISD employee involvement in enforcement could complicate a school's ability to help protect the child's and state's interest in this manner.

Paying the Price: The Impact of Immigration Raids on America's Children. 2007.
http://www.urban.org/UploadedPDF/411566_immigration_raids.pdf

Facing Our Future: Children in the Aftermath of Immigration Enforcement. 2010.
http://www.urban.org/UploadedPDF/412020_FacingOurFuture_final.pdf

²¹ Congressional Research Service. "Sanctuary Cities: Legal Issues" Yule Kim and Michael John Garcia/RS22773. January 9, 2008; Ferrell, Craig. 2004. "Immigration Enforcement: Is it a Local Issue?" *The Police Chief* (71)2.

²² Congressional Research Service. "Sanctuary Cities: Legal Issues" Yule Kim and Michael John Garcia/RS22773. January 9, 2008; Ferrell, Craig. 2004. "Immigration Enforcement: Is it a Local Issue?" *The Police Chief* (71)2.



Immigration Status and Public Benefits

Several bills filed this session make use of two strategies (or a combination) to address concerns about the use of public benefits by undocumented immigrants:

1. Mandate verification of immigration status when applying for a public welfare program (H.B. 474, H.B. 1553)
2. Mandate public agencies to provide an annual report that estimates the cost of services to undocumented immigrants (H.B. 21, H.B. 608, H.B. 1553)

H.B. 1257 amends provisions that affect HHSC eligibility systems for federally funded public benefits. These changes create automated controls to ensure compliance with third party verification of immigration status.

Proponents argue legislation relating to immigration status and public benefits is a response to the social and economic costs associated with the onslaught of undocumented immigrants.¹

Opponents argue that this legislation turns public officials into immigration officers, which is beyond their training and conflicts with the duties and priorities of their job. Further, such legislation hinders eligible immigrants from accessing benefits for fear of being reported to ICE.

Background

Prior to the mid-1990's, U.S. lawmakers paid little attention to the relationship between the use of publicly funded benefits and legal status. Generally, any individual who could claim "color of law" status (living here without evidence of a removal order) were considered U.S. legal residents for the purposes of public benefit programs.²

The Immigration Reform and Control Act (IRCA) of 1986 marked the shift in U.S. policy regarding immigration status and public benefit use. IRCA required the affirmative proof of legal status rather than the absence of a removal order. The 1996 welfare reform, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) further cemented the backlash against the use of public benefits among immigrants.³ PRWORA limited the access to means-tested federal public benefits and

¹ Paul Davenport. February 23, 2011. "Latest Arizona Immigration Bills have Tougher Path." Associated Press

² Sara Rosenbaum. March – April 2007. "Law and the Public's Health: Medicaid and Documentation for Legal Status: Implications for Public Health Practice and Policy." *Public Health Reports*. Vol. 122.

³ The dual purpose of PRWORA was the introduction of benefit restriction as immigration policy and emphasis on the value of self-sufficiency in U.S. immigration policy. PRWORA sought to ensure that "aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations" Further, PRWORA's restriction sought to ensure that benefits do "not constitute an incentive for immigration." Some analysts of PRWORA have characterized the restriction of benefits to immigrants as the use of health care as a "tool in immigration policy." See Marc Berk, et. al. July/August 2000. "Health Care Use Among Undocumented Latino Immigrants." *Health Affairs*. and Jacqueline Hagan, et. al. Summer 2003. "The Effects of Recent Welfare and Immigration Reforms on Immigrants' Access to Health Care." *International Migration Review*.



imposed restrictions on most otherwise eligible noncitizen children and adults who are undocumented, in the U.S. less than 5 years or fail to fall within a recognized eligibility category.⁴ The Congressional Budget Office projected that PRWORA would save an estimated \$54.1 billion over the period 1996-2002. Of this \$54.1 billion, 44% (or \$23.8 billion) came from the restriction of benefits to immigrants.⁵

By and large, states implemented the status verification mandate by accepting oral statements of immigration status. In the summer of 2005, these techniques came under scrutiny. In response, Congress included an amendment to the deficit reduction requiring states to obtain proof of citizenship from citizens who applied for Medicaid.

Concerns with verification:

- *Lack of research to suggest that benefit fraud is significant or widespread:* Verification policies are framed as a means to reduce the fraud by undocumented immigrants. However, no research confirms that fraud remains a major issue.⁶
- *Chilling effect:* Verifying immigration status may deter eligible individuals from applying for benefits for fear of being reported to ICE. Mixed status households would be particularly vulnerable to this threat, as undocumented parents may elect not to apply for benefits for their eligible citizen children.
- *Criteria used for verification:* The 2006 Medicaid mandate resulted in the loss of coverage for many noncitizen children and reduced coverage among eligible citizens. Several studies suggest that the reduction in Medicaid rolls was a result of the disqualification of eligible citizens who could not secure the documents to prove immigration status or identity, rather than a reduction in the number of non-eligible adults unlawfully accessing benefits.^{7,8}

Concerns with Documentation and Reporting

- *Fiscal impact on agencies:* The implementation of these policies would increase the burden on public agencies as it would require additional training to make determinations and additional administrative costs to consolidate information and estimates for reporting. Similar legislation passed in other states suggests that the cost of implementation would outweigh the potential cost savings.
 - House Bill 1023, passed in Colorado in 2006, prohibited the spending of taxpayer money on undocumented immigrants, except in cases required by the federal government. In

⁴ Sara Rosenbaum. March – April 2007. "Law and the Public's Health: Medicaid and Documentation for Legal Status: Implications for Public Health Practice and Policy." *Public Health Reports*. Vol. 122.

⁵ Hyejung Janet Shin. July 2006 "All Children are Not Created Equal: PRWORA's Unconstitutional Restriction on Immigrant Children's Access to Federal Health Care Programs." *Family Court Review*

⁶ Leighton Ku and Fouad Pervez. February 2010. "Documenting Citizenship in Medicaid: The Struggle between Ideology and Evidence." *Journal of Health Politics, Policy and Law*. Vol. 35 No. 1: 5-26.

⁷ Leighton Ku and Fouad Pervez. February 2010. "Documenting Citizenship in Medicaid: The Struggle between Ideology and Evidence." *Journal of Health Politics, Policy and Law*. Vol. 35 No. 1: 5-26.

⁸ Sara Rosenbaum. March – April 2007. "Law and the Public's Health: Medicaid and Documentation for Legal Status: Implications for Public Health Practice and Policy." *Public Health Reports*. Vol. 122.



**Immigrant
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of Austin

2007, the state estimated that implementation of the law cost taxpayers \$2 million. No state department reported a cost savings.⁹

- The Federal House Committee on Oversight and Government Reform reviewed information about the Medicaid verification mandate from six states and found the states spent \$16 million on implementation and identified eight undocumented immigrants. The committee estimated that for every \$100 in administrative costs, the federal government saves 14 cents in benefits.¹⁰
- *Incomplete financial analysis:* Documentation is justified as a means to understand and measure the economic impact of undocumented immigration. However, the analysis considers state expenditures for undocumented immigrants to the exclusion of the fiscal contribution of undocumented immigrants.
 - A 2006 study by the Texas State Comptroller concluded that "the absence of the estimated 1.4 million undocumented immigrants in Texas in fiscal year 2005 would have been a loss to our gross state product of \$17.7 billion. Undocumented immigrants produced \$1.58 billion in state revenues, which exceeded the \$1.16 billion in state services they received."¹¹

⁹ Mark Couch. January 25, 2007. "Colorado Immigration Law Falls Short of Goal." *The Denver Post*.

¹⁰ Leighton Ku and Fouad Pervez. February 2010. "Documenting Citizenship in Medicaid: The Struggle between Ideology and Evidence." *Journal of Health Politics, Policy and Law*. Vol. 35 No. 1: 5-26.

¹¹ Carole Keeton Strayhorn, Texas Comptroller, *Special Report: Undocumented Immigrants in Texas: A Financial Analysis of the Impact to the State Budget and Economy*. Austin, TX: December 2006, p. 1.

